Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 8385 of 2002

Pronounced on : December 20, 2007

Govt. of NCT of Delhi & Ors. .....Petitioners

! ***through*** **:** Mr. V.K. Tandon, Advocate

VERSUS

$ Jitender Kumar .....Respondent

! ***through*** **:** Mr. Sudarshan Rajan, Advocate

CORAM :-
*** THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner, Directorate General of Home Guards and Civil Defence, Government of NCT of Delhi, had invited applications for the post of Chowkidar. For this purpose, advertisement was issued and the candidates desirous of being appointed were required to fill up the attestation/application form for the said post. The respondent herein also gave the application in the prescribed form. In column 12 of this application form, following information was sought:-

> "12(a) Have you ever been arrested, prosecuted, kept under detention or bound down/found convicted by a court of law or any offence or debarred/disqualified by any public service commission from appearing at the examination/selection or debarred from any examination rusticated by the University of any other Educational Authority/Institution at the time of filling up the attestation form.
>
> (b) Is any case pending against you in any court of law, university or any other education authority/ institution at the time of filling up this attestation form.
>
> (If the answer to (a) or (b) is 'YES', full particulars of the case, arrest, detention, fine, conviction, sentence, etc. and the nature of the case pending in the Court/University/ Educational Authority etc. at the time of filling up this form should be given).
>
> Note: Please also see the 'Warning' at the top of this attestation

form."

2. Against this column, no information was given and it was left blank. The candidature of the respondent was considered and he was offered temporary post of Chowkidar vide letter dated 17.9.2001. He joined the duties on 26.9.2001 pending verification of his character and antecedents. The police verification was sought in the meantime and report dated 20.12.2001 was received from the DCP, Special Branch, Delhi, stating that the respondent was reported to be involved in FIR No.554 dated 15.7.1997 under Section 325/34 IPC, Police Station Hari Nagar, New Delhi. It was further stated that, in the said FIR, he was acquitted by the Court of learned MM, Delhi on 2.7.2000 in Lok Adalat.

3. The petitioner, after receiving this information, took the view that the respondent had deliberately not mentioned regarding his involvement in the above case in column No.12 of the attestation form and, therefore, invoking the provisions of Rule 5(1) of the CCS (Temporary Service) Rules, 1965, his services were terminated vide orders dated 2.4.2002. After being unsuccessful in the departmental appeal, the respondent herein challenged the said action of the petitioner herein before the Central Administrative Tribunal by filing application under Section 19 of the Administrative Tribunal Act (OA No.1072/2002). This OA is allowed by the learned Tribunal vide impugned judgment dated 16.8.2002.

4. Feeling aggrieved, present petition is preferred by the Government of NCT of Delhi under Article 226 of the Constitution.

5. It is case of the petitioner that the question is not as to whether the respondent was acquitted in the FIR lodged against him under Section 325/34 IPC. The issue, however, relates to the concealment of respondent's involvement in the aforesaid FIR, which amounts to suppression of the information. Learned counsel drew the attention of this Court to the said attestation/application

form, which, at the outset, contained the following warning:-

> "Warning
>
> The furnishing of false information or suppression of factual-I information in the attestation form would be offence and is likely to render the candidate unfit for employment into the Government.
>
> 2. If detained, convicted, debarred etc. subsequent to the completion and submission of this form, the details should be communicated immediately to the U.P.S.C. or the authority to whom the attestation form has been sent earlier, as the case may be, failing which it will be deemed to be a suppression of factual information.
>
> 3. If the fact that false information has been furnished or that there had been suppression of any factual information in the attestation form comes to notice at any time during the service of a person his service would be liable to be terminated."

6. He submitted that it was categorically informed to the applicants that furnishing of false information and suppression of factual information would render the candidate unfit for employment. The candidates were also warned that if such false information or suppression of any factual information is detected at a later stage during the service of a person, his services would be liable to be terminated. In column No.12, while seeking the information about the involvement of a candidate in a criminal case, specific attention of the candidate was drawn to the aforesaid 'Warning' in the note appended below the said column. Therefore, argued the learned counsel, that the action of the petitioner in terminating the services of the respondent was lawful and justified and the Tribunal did not appreciate the contentions in the right perspective while holding that there was no material concealment and services should not have been terminated. He submitted that the petitioner had relied upon the judgment of this Court in ***Pramod Kumar Rastogi Vs. Union of India & Ors.***, 1999 (49) DRJ 506, which was not considered properly.

7. It is not in dispute that the respondent herein had left blank Column No. 12 of the application form and, thus, did not give the information about his involvement in the case under Section 325/34 IPC and the acquittal therein. The information sought in Column No.12 is not only of the case in which the candidate is convicted but the candidate is also required to give the

information about the case in which he is prosecuted. Column No. 12(a), which requires a candidate to give information about arrest, prosecution, detention etc., ends with the words *'**at** the time of filling up the attestation form'*. However, in the bracketed portion under Column No.12, where full particulars of the case etc. are required to be given, these are to be in the event of arrest, detention, fine, conviction, sentence, etc. The word *'acquittal'* is conspicuously absent. Reading Column No.12 in its entirety would clearly indicate that :

(i) the information is to be given in respect of those cases where a candidate was either arrested, or detained, or convicted even with fine or sentenced. Thus, in a case where the candidate was arrested or kept under detention, even if such a case ultimately resulted in acquittal, information is to be provided; and

(ii) insofar as prosecution is concerned, information is to be provided if such a prosecution is pending at the time of filling up the attestation form. However, if there is no such prosecution pending and the person was acquitted in the case in which he was either arrested or detained, he may not be required to give such an information.

8. In the present case, the respondent was prosecuted under Sections 325/34 IPC. He had already been discharged much before the filling up of the attestation form. Therefore, if, going by the language of Column No.12, he under a *bona fide* impression thought that such an information is not to be provided and did not provide this information, it may not be a serious lapse on his part. One has to keep in mind the fact that the respondent is not a very literate person and the post for which he had applied was that of Chowkidar.

9. Even if it is to be presumed that he was required to give such an information, in a case like this we are of the opinion that the Tribunal was correct in observing that such a minor indiscretion of non-disclosure would have no

bearing on his ultimate appointment. The Tribunal for this purpose relied upon the judgment of a Single Judge of this Court in the case of ***Pramod Kumar Rastogi*** (supra). Para 9 depicts the mind of the Tribunal and also contains the quote from the aforesaid judgment of this Court and, therefore, we reproduce this para:-

> "9. I have carefully considered the matter. Facts are not disputed that the applicant had failed to indicate in his attestation form that he was involved in a criminal case much earlier, as he was acquitted in the same. Respondents from their side, aver that the termination of the applicant's service was not on account of his involvement in the case but on account of his not mentioning the same, in the attestation form. Doubtless, therefore the applicant has been guilty of the minor indiscretion of non-disclosure but the fact remains that the fact, even if disclosed would not have come in the way of his ultimate appointment. The case of the applicant gains support from the decision of the Hon'ble Delhi High Court in Pramod Kumar Rastogi's case (supra) wherein it is held as below :-
>
> > "The word concealment has got a definite connotation in law. Everything *(sic)* withholding of a fact would not be concealment. When civil consequences follow on the basis of the any act of omission on the part of the employees, the provision has to be strictly construed and the second respondent should not only prove and establish that there was a concealment in law and act complained of was such that the employee concerned could not be entrusted with any responsible job having regard to his propensity to commit crime. From the information made available the second respondent should have come to a positive conclusion that the general tendency of the petitioner is to resort to force and to take law into his hands and the employee has no regard for the rule of law. The law does not empower the second respondent to presume proprio vigore that the concealment would amount to the petitioner being rendered unfit for the tasks assigned to him and the petitioner would compromise the interests of the organisations."

10. On going through the judgment in the case of ***Pramod Kumar Rastogi*** (supra), we find that the learned single Judge had relied upon the judgment of the Supreme Court in ***Pawan Kumar vs. State of Haryana & Anr.,*** AIR 1996 SC 3300. That was a case where the appellant before the Supreme Court, while in service, was convicted after a summary trial for an offence under Section 294 IPC on his confession to his guilt and a sum of Rs.20/- was imposed as fine. On this conviction his services were terminated. The Supreme Court held that such a conviction for a petty offence which did not involve any moral

turpitude could not be the basis of termination and set aside the same. What is important is the following observations made by the Apex Court which may serve as a guiding principle for us also in such cases :-

> "Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary Courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are, therefore, necessary in raising the toleration limits with regard to petting offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs.2,000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in Government service. This can brook no delay, whatsoever."

11. We may remark here that where the case is pending at the time of filling up of the form, position would be different and in case a candidate conceals such an information or provides wrong information, the candidature or even the appointment can be cancelled {See – ***Sanjay Kumar Bajpai v. Union of India,*** 1997 II AD SC 704}. Similarly, where the prosecution, though resulted in acquittal, was for an offence which otherwise involves moral turpitude, it may be necessary to mention particulars of such a case as that may be a relevant consideration to adjudge the conduct or character of a candidate to be appointed to a service even when such a prosecution resulted in acquittal, inasmuch as, it would provide information about the antecedents of the candidate {See – ***Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar,*** JT 1996 (10) SC 34}. However, where the offence with which the candidate was charged was petty offence not involving moral turpitude and it has resulted in acquittal as well and going by the petty nature of the offence if such a factor is not material enough to deny appointment to a candidate, non-disclosure thereof shall not be a ground to terminate his services.

12. In view of the foregoing discussion, we are of the opinion that the judgment of the Tribunal, in the facts of the present case, does not call for any interference. We, accordingly, dismiss this writ petition.

No costs.

(A.K. SIKRI)
JUDGE

(VIPIN SANGHI)
JUDGE

December 20, 2007
nsk